

## MEMORANDUM OF UNDERSTANDING

The Professional and Vocational Employees Division of Teamsters Local 856, IBT, and representatives of the City of San Bruno have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of employees in the representation unit listed in Section I, have exchanged freely information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Memorandum of Understanding is entered into pursuant to the Meyers Milias-Brown Act (Government Code Sections 3500 et seq.) and has been jointly prepared by the parties.

This Memorandum of Understanding is a compilation of the previous Memorandum of Understanding with modifications as approved pursuant to Resolution 1987-4, Resolution 1989-98, Resolution 1993-2, and the Letter of Understanding dated November 14, 1995, for the period commencing November 1, 2000 (unless otherwise specified as to particular sections within) and ending October 31, 2004.

### Section 1. Recognition

Union Recognition. Professional and Vocational Employees Division of Teamsters Local 856, IBT, hereinafter referred to as the "Union" is recognized as the majority representative, as provided in the City's Employer-Employee Relations Resolution No. 1970-20, adopted March 23, 1970, for all employees assigned to the classifications set forth in Appendix A, which is attached and made a part hereof.

### Section 2. Union Security

#### Section 2.1 Agency Shop and Dues Deduction

(a) Any regular full-time or regular part-time employee who is covered by this MOU shall either become a member of the Union, or in the alternative, shall pay to the Union as an agency fee an amount of money equal to the customary initiation fee and monthly dues. Such obligation shall not commence until after the employee has completed thirty-one (31) days of employment or thirty-one (31) days after the effective date of this provision, whichever occurs later.

(1) Prior to implementing an increase in the amount of the customary initiation fee, (currently \$200, as of February 1, 2001) as described in subsection (a), the Union shall meet and confer with the City.

(b) Any employee who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting a public employee

organization shall not be required to join or financially support the Union. Those employees may, in lieu of dues, pay initiation fees or agency fees to a non-religious, non-labor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Three charitable funds shall be mutually agreed upon through the meet-and-confer process between the City and the Union, if the need to designate such charitable funds arises.

(c) The agency shop provision shall not apply to management, confidential or supervisory employees and shall not be a condition of employment. It shall be the obligation of the Union to enforce this provision of the Memorandum of Understanding.

(d) The Union shall indemnify and hold the City harmless from any cost of liability resulting from any and all claims, demands, suits, or any other action arising from the operation of this provision or from the use of the monies remitted to the Union, including the costs of defending against any such actions or claims. The Union agrees to refund to the City any amounts paid to it in error.

(e) The City agrees to deduct on a biweekly basis the periodic membership dues and agency fees from the paycheck of each employee who voluntarily executes and delivers to the City a valid dues checkoff authorization form. Voluntary checkoff authorization for Union dues/agency fees which were executed prior to the execution of this memorandum shall remain in full force and effect.

Effective with the approval of this Memorandum of Understanding, the City Finance Director will accept a new dues deduction authorization form from employees in the representation unit covered by the Memorandum of Understanding. This form shall be as follows:

"I, the undersigned, voluntarily authorize by this writing the City of San Bruno to deduct from my wages and to transmit to TEAMSTERS LOCAL NO. 856 any and all sums of money certified by Local 856 to be payable by me for membership dues or agency fees which are presently due and which shall become due from month to month uniformly imposed by said Local Union.

"This authorization is to remain in effect for a period of twelve (12) months from the date of execution and shall be automatically renewed from year to year thereafter, unless I notify the above-named Union and Employer in writing within twenty (20) days prior to the annual renewal dates that such authorization be terminated."

(f) The Union shall hold the City of San Bruno and its officers and employees, including but not limited to the City Finance Director, harmless for following the instructions contained in such dues deduction authorizations. The City shall deliver revocations of membership to the Union on a bi-weekly basis and include verification that receipt was by registered mail. Initiation fees will not be considered a special assessment.

The City shall not be required to modify the amounts deducted from the employee paychecks for dues or fees more than once in each calendar year.

The City shall not be required to collect any special assessments or similar short-time changes in rate.

### Section 2.2 Communications with Employees

The Union shall be provided suitable space on bulletin boards at each work location for posting notices concerning official Union business.

### Section 2.3 Advance Notice

Except in cases of emergency as provided below in this subsection, the Union, if affected, shall be given reasonable advance written notice of any ordinance, resolution, rule or regulation directly relating to matters within the scope of representation proposed to be adopted by the City and shall be given the opportunity to meet and confer with the appropriate management representatives prior to adoption.

In cases of emergency when the foregoing procedure is not practical or in the best public interest, the City may adopt or put into practice immediately such measures as are required. At the earliest practicable date thereafter the Union shall be provided with the notice described in the preceding paragraph and be given the opportunity to meet and confer with the appropriate management representatives. As used herein, "emergency" shall mean any situation in which proper management of the city requires immediate action, or in which immediate action is necessary for the preservation of life or property.

### Section 2.4 List of Union Employees

The City shall furnish to a representative designated by the Union, the name(s), initial rate of pay, classification and date of hire of employees newly appointed to the classifications set forth in Appendix "A" and employees leaving such classifications. The City, upon request of the Union, shall provide to a representative designated by the Union, a list reflecting current rates of pay for all employees in such classifications once per year.

### Section 2.5 Designation of Confidential Unit Employees

Positions in this unit in the areas of information technology, payroll, or providing support to the City Manager's Office, City Attorney's Office or a department head on a project basis are deemed to be confidential employees.

## Section 3. City Rights

(a) The City shall retain the full rights of management and the direction of its business and operations, except as expressly limited and set forth in writing in this MOU. Wherein a subject matter is covered by the MOU, the City will act in accordance with those sections.

(b) Nothing herein shall be construed to require the City to meet and confer on matters which are solely the function of management and which are not otherwise provided in this

Memorandum of Understanding or letters of understanding executed by the parties in relation to the Memorandum of Understanding. The rights of the City through its Council and management include, but are not limited to, the following:

- (1) To exclusively determine the mission of its constituent departments, commissions, and boards;
- (2) To set standards of service for the various City departments;
- (3) To determine the procedures and standards of selection for employment;
- (4) To establish grooming standards;
- (5) To lay off its employees from duty because of lack of work or other legitimate reasons;
- (6) To maintain the efficiency of governmental operations;
- (7) To determine the methods, means, and personnel by which governmental operations are to be conducted;
- (8) To determine the content and intent of job classifications;
- (9) To determine the methods of financing the operation of the various departments;
- (10) To determine the style and/or types of City-issued wearing apparel, equipment, or terminology to be used;
- (11) To determine and/or change the facilities, methods, technology, means, organizational structure, and size and composition of the work force, and allocate and assign work by which City operations are to be conducted;
- (12) To determine and change the locations and types of operations, processes, and materials to be used in carrying out all City functions, including, but not limited to, the right to contract or subcontract any work or operations of the city;
- (13) To assign work to and schedule employees in accordance with requirements as determined by the City, and to establish work schedules and assignments;
- (14) To establish and modify productivity and performance standards for employees, and to require compliance therewith;
- (15) To discharge, suspend, demote, reprimand, withhold salary increases, or otherwise discipline employees for cause;

(16) To take all necessary actions to carry out its mission in emergencies.

It is a major purpose of this section to maximize the flexibility of the City to conduct its day-to-day operations.

(c) Prior to modification of the following subjects, the City shall meet and confer with the Union:

- (1) Minimum qualifications for classifications represented by the Union;
- (2) The content and intent of job classifications; provided, however, that it is understood that job descriptions used to describe the various duties of a classification do not preclude employees from being assigned to work not listed as a specific duty of that classification;
- (3) Licenses and certificates required for such classifications of employees;
- (4) Degrees of training required for such employees;
- (5) Grooming standards applicable to such employees;
- (6) Productivity and performance standards of such employees;
- (7) Styles and types of wearing apparel to be used on duty;
- (8) Size and composition of the work force within the bargaining unit;
- (9) Contracting or subcontracting of operations currently being performed by employees within the bargaining unit.

(10) Changes by the City in scheduled days and hours of work, where such changes are anticipated to continue for a period of 30 calendar days or longer, and involve Saturday or Sunday work or involve a change in established scheduled working hours which result in an employee reporting to work prior to 7:00 AM or leaving after 6:00 PM.

The obligation of the City to meet and confer regarding the foregoing subjects shall not be construed to require that the City and the Union reach agreement prior to the implementation of the types of modifications described in this subsection.

(d) Nothing in this section shall be construed to excuse the City from the obligation to meet and confer with the Union regarding any subject or matter not set forth in this section where required to do so by statute.

(e) Neither the Union nor any employee within the bargaining unit shall contest through the grievance procedure the authority of the City under state or federal law to exercise the rights enumerated in subsection (b). Except as provided therein, the Union may use the courts

to contest the exercise of such authority.

#### Section 4. No Discrimination

There shall be no discrimination by either Union or City on any basis prohibited by state or federal law or City policy, or on account of any legitimate Union activity.

#### Section 5. Union Stewards and Official Representatives

##### Section 5.1 Stewards

(a) The Union shall be entitled to a reasonable number of stewards, who shall restrict their activities to the handling of grievances and shall be allowed a reasonable amount of time for this purpose. The Union shall notify the City Manager in writing of the names of the stewards.

Stewards shall obtain permission from their supervisors before leaving their work stations to resolve grievances. This provision shall not be used to prevent the stewards from performing their duties or obligations set forth in this section; provided, however, that the use of time for this purpose shall be reasonable and shall not interfere with the requirements of the City's services, as determined by the City.

(b) Activities such as soliciting for membership, collecting dues, holding membership meetings, campaigning for office, conducting elections, and distributing literature are strictly prohibited during working hours without the prior approval of the City Manager or his/her representative.

(c) In the event the City believes that the stewards are abusing the provisions of this section, it shall contact the Union or its representative to arrange a mutually acceptable time and place to investigate the City's complaint and to assure full compliance by the steward to the extent possible.

(d) Whenever an employee is required to meet with a supervisor and the employee reasonably anticipates that such meeting will involve questioning leading to disciplinary action, the employee shall be entitled to have a Union representative present upon request. In the event the employee desires the presence of a Union representative, the City will contact the Union to arrange a mutually acceptable time to hold the meeting. Once scheduled, neither party shall be required to reschedule the meeting for the convenience of the other. This provision shall not prohibit the City from taking immediate action if, in City's opinion, immediate action is necessary, if the City contacts or makes good faith efforts to contact a Union representative or steward and meet with the representative or steward as soon as possible after the incident precipitating the action occurs.

##### Section 5.2 Representative of the Union

A qualified representative of the Union shall be allowed to visit the work location for the

purpose of ascertaining whether or not this Memorandum of Understanding is being observed. This right shall be exercised reasonably. A qualified representative of the Union shall report to management before proceeding to the work location. The representative shall not interfere with the normal conduct of work.

### Section 5.3 Changes

In no event shall a steward or other representative of the Union order any changes, and no changes shall be made except with the consent of the City Manager.

### Section 5.4 Access to Personnel Files

An employee or, on presentation of written authorization from the employee, an employee's representative shall have access to the employee's personnel file upon request and at the reasonable convenience of Human Resources. Documentation in the personnel file relating to the investigation of a possible criminal offense, medical records, pre-employment background information, and information or letters of reference shall be specifically excluded from the inspection and review of the employee and/or the employee's representative. Personnel files shall be reviewed by the employee or his/her representative in the presence of a designated Human Resources representative. An employee may request a copy of materials which are not excluded from inspection and review under this section.

The City will provide employees with copies of all Performance Evaluations, Letters of Reprimand, and Letters of Recordation, if any, and such copies shall be provided to the Union with written authorization of the employee.

(a) For the purposes of this Memorandum of Understanding, a Letter of Recordation is understood as a written record placed into an employee's personnel file intended to be either informative in nature or to document in a positive rather than punitive manner, a notice to the employee for personal correction of actions, which if continued, could result in disciplinary action. Such record does not constitute a disciplinary action. If in the event the employee feels such record constitutes an adverse comment, the employee may, within 30 days, file a written response. The written response shall be attached to, and shall accompany the Letter of Recordation.

## Section 6. Salary Plan

### Section 6.1 Salary Ranges

(a) Salary ranges for represented classifications shall be as set forth in Appendixes "A", "A-1, and "A-2," hereto attached and made a part hereof, on the effective dates specified herein. The following represents agreed upon modifications to salary during this contract:

(1) Effective December 18, 2000, top steps for covered classes in the bargaining unit will be set to reflect market average<sup>a</sup> or internal as set forth in Appendix "A."

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<sup>a</sup> Historical footnote: Survey jurisdictions used in 2000-01 were the cities

(2) Effective first pay period after November 1, 2001, the salary range for covered classes in the bargaining unit will reflect a 4.5% increase.

(3) Effective first pay period after November 1, 2002, the salary range for covered classes will be adjusted based on the Bay Area CPI<sup>b</sup>, as follows: if the CPI is between 3.0% and 6.0%, the adjustment would be the same as the actual CPI rate; if the CPI is below 3%, the adjustment would be 3%; if the CPI is greater than 6% but less than 8%, the adjustment would be 6%. The City will meet and confer on the issue of salary adjustment should the CPI equal or exceed 8%, if so requested by the Union.

(4) Effective first pay period after November 1, 2003, the salary range for covered classes will be adjusted based on the Bay Area CPI, under the same rules as the November 1, 2002, adjustment.

(5) The applicable percentage increases shall be paid at the highest previously existing base rate for the top step of the "employee paid PERS" for each salary range.

(a) For the five- or six-step range, the range will be calculated by dividing each range step, beginning with top step, by the factor 1.0525.

(b) The City agrees to a phased elimination of nine- and eleven-step pay plans and to maintain five- and six-step pay plans for all unit employees. Employees on the nine/eleven step plan as of November 1, 2000, shall be eligible for a merit step increase to the appropriate salary step on the new five/six step plan which provides for at least a five percent (5%) salary adjustment or up to the maximum salary step at the time of the employee's annual performance review date next following November 1, 2000. The City will maintain both a five/six and nine/eleven step salary range structure for approximately one year during this transition period. Any employee hired on or after March 1, 2001, will be assigned to the appropriate five/six step salary plan. Employees hired between November 1, 2000, and February 28, 2001, will be eligible for a merit step increase to the appropriate salary step on the new five/six step plan which provides for at least a five percent (5%) salary adjustment or up to the maximum salary step after six months of service.

Effective first pay period after July 1, 2003, the City agrees to transition the Maintenance Worker I classification from a six-step salary plan to a five-step plan by eliminating the then-current step one and renumbering the then-current step two as new step one, etc. Any employee who was at then step one would automatically be moved to the new step one of the salary range.

## Section 6.2 Salary Plan Administration

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of Burlingame, Daly City, Foster City, Menlo Park, Millbrae, Pacifica, San Mateo and South San Francisco, and San Mateo County.

b Defined as the Consumer Price Index (SF/Bay Area 82-84 = 100, W).

Employees occupying a position in the competitive service shall be paid a salary within the range established for that position's classification.

### Section 6.3 Salary Plan Administration, Original Appointment

Except as herein otherwise provided, the salary for a new employee entering the competitive service shall be the minimum salary step for the classification to which the employee is appointed. However, when necessary to secure the best-qualified employee for a position, the City Manager may appoint a new employee at a salary step other than the minimum step of the respective classification. The City Manager's decision shall be final.

### Section 6.4 Salary Plan Administration, Advancement with Salary Range

No salary advancement shall be made so as to exceed the maximum rate established in the pay plan for the class to which the advanced employee's position is allocated. Employees hired at the first step of the salary range shall be evaluated for salary advancement after the first six months of service from the anniversary date and after additional one-year periods of service thereafter until the employee has reached the maximum rate established. Employees hired at other steps of the salary range shall be evaluated for salary advancement after the first year of service from the anniversary date and after additional one year periods of service thereafter until the employee has reached the maximum rate established. Advancement within the salary range shall generally be made one step at a time. However, the City Manager may, when circumstances warrant it, advance the salary of an employee more than one step at a time, or earlier than the required waiting period.

Advancements shall not be automatic, but shall depend upon increased service value of an employee to the City as exemplified by recommendations of the employee's supervisor, length of service, performance record, special training undertaken, or other pertinent evidence.

Advancement to the next higher step within the range of the assigned classification shall be implemented only upon final approval by the City Manager.

Changes in an employee's salary because of promotion, demotion, or an early salary advancement or a delayed salary advancement will set a revised salary anniversary date for that employee.

Salary range adjustments for a classification will not set a new salary anniversary date for employees serving in that classification.

Whenever the schedule of compensation for a classification is revised, each incumbent in a position to which the revised schedule applies shall be paid at the same step in the revised range as the step at which the employee was paid in the previous range.

If an employee takes a leave of absence, the time spent away from work shall not be counted toward the completion of the next step. If an employee takes a leave of absence with pay, the time spent away from work in excess of 45 consecutive calendar days shall not be

counted toward the completion of the next step.

#### Section 6.4.1 Salary Plan Administrations, Employee Evaluations

- (a) Probationary employees shall be evaluated in writing at least every four months during their probationary period.
- (b) Permanent employees eligible for salary step increases shall be evaluated in writing at least once every six months.
- (c) Other permanent employees shall be evaluated in writing at least once per year.
- (d) If an employee evaluation is not completed within thirty (30) days of its due date, the evaluation of that employee shall be deemed to be satisfactory.

An employee, within thirty days (30) after receiving an evaluation, may submit a written response of reasonable length to such evaluation. The written response shall be filed with the evaluation and shall be retained in accordance with established City policy.

#### Section 6.5 Anniversary Date

- (a) The anniversary date is the date from which time is calculated for purposes of salary step advancement, the ending of the probationary period, the advancement of vacation accrual dates and the accrual of sick leave. This date shall be the employee's actual date of hire.
- (b) The actual date of hire shall govern seniority, and layoff.

#### Section 6.6 Salary Plan Administration, Salary Step after Promotion or Demotion

##### (a) Promotion

##### (1) Rate of Pay.

When an employee is promoted from a position in one classification to a position in a higher classification, that employee shall be entitled to receive the rate of pay of the lowest step in the salary scale of the classification which provides at least 5% above the base salary of the employee, not including acting or special assignment pay or other incentive pay.

##### (2) Performance Evaluation.

Employees on promotional probation shall be given a written evaluation every four months during the first twelve months.

##### (b) Demotion

- (1) General. When an employee is demoted, the employee's compensation shall

be adjusted to the salary prescribed for the classification to which the employee is demoted, and the specific rate of pay within the range shall be determined by the City Manager. Where the demotion is not for disciplinary purposes, the City Council may provide for a rate of pay higher than the maximum step of the salary schedule for such classification.

(2) Abolition of position. When an employee is demoted as a result of abolition of position, that employee shall be placed at the salary step in the lower classification which most closely approximates but does not exceed the employee's salary in the higher classification.

(3) Voluntary demotions; demotions resulting from probationary rejections. When an employee takes a voluntary demotion to a position previously held or is reappointed to such a position as the result of a probationary rejection, the employee shall be placed at the same step in the lower classification which the employee last held. The employee's service time at such step shall be the same as the service time held previously at such step.

(4) Disciplinary demotions. When an employee is demoted to a lower classification for disciplinary reasons, the specific rate of pay in the salary range of such classification to which the employee shall be entitled shall be determined by the City Manager.

Section 6.7 Acting Pay

(a) Assignment to another classification. An employee assigned by the department head to perform substantially the duties of a higher paid classification for one full day or more shall receive the rate of pay established for the salary step of the classification of the acting assignment that is a minimum of five percent (5%) greater than the employee is currently earning, retroactive to the first hour; provided, however, that the rate paid shall not exceed the top step of the assigned classification. Work assignments shall not be changed for evading Acting Pay provided in this section to an employee who otherwise would be eligible. In addition to pay, an employee assigned to another classification shall receive any benefits attendant to the higher classification which are not attendant to the employee's normal classification. This includes eligibility for management leave (and loss of overtime eligibility) if appointed to an FLSA-exempt position for a period of thirty (30) days or more. Also, if an employee is assigned to another classification on the two workdays immediately preceding and immediately following a City holiday, that employee shall receive holiday pay at the rate of the higher classification.

The City Manager shall have the discretion to increase the salary of such employee to an amount not in excess of the top step of the higher classification. If an employee is assigned to another classification for a period exceeding one year, that employee shall be eligible for merit step increases in the higher classification, and shall be returned to the employee's original classification at a higher step, if applicable.

(b) Special Circumstances – Special Recognition Pay. An employee specifically assigned by a department head through use of the personnel action form process on a temporary or longer term basis to regularly perform work outside of the scope of the employee's permanent

classification but not performing substantially the duties of another job classification may receive Special Circumstances – Special Recognition Pay at the exclusive discretion of the City Manager. The City Manager may assign a rate of pay between 3.5% and 10% depending on the nature of the circumstances and organizational need. The determination as to the rate of pay made by the City Manager is final and is not subject to use of the Grievance Procedure.

#### Section 6.8 Water Certification Pay

Employees in the classification of Maintenance Worker I/II, who are assigned to the Water Division and who obtain and maintain AWWA Water Treatment Operator grade 2 certification or the equivalent certification required by the California Department of Health Services, shall be entitled to water certification pay in the amount of three percent (3%) of the employee's regular base salary. Such pay shall commence the first pay period after the employee provides proof of having obtained the necessary certification.

#### Section 6.9 Bilingual Incentive Pay

(a) Employees who are capable of using American Sign Language, or a foreign language designated by Human Resources as critical for public service in San Bruno, in business dealings with the public shall be eligible for incentive pay at a rate of 2.5% of base salary.

(b) To receive bilingual incentive pay, an employee must pass a basic written test and an oral conversation exercise.

(c) Incentive pay eligibility will begin when the City has concluded contracts with all bargaining units in active negotiation as of February 1, 2001.

#### Section 6.10 Revision of Certain Position Descriptions

It is understood and agreed that Maintenance Worker II, Mechanic II, and Pump Mechanic II position descriptions will be updated to reflect clarifications of certifications and experience requirements. The City and Union agree that, with the salary level reflected in Appendix "A," the City will not provide additional incentive pay for attaining certifications necessary or directly related to the performance of job duties outlined in position descriptions (except as noted in Section 6.8 above) and that the level II positions reflect differentiation in nature of work duties performed between the level I and II employees.

It is further understood and agreed that a new CATV Technician position description will be developed to reflect the I, II and III levels, and that a position description will be developed for the Maintenance Technician position.

#### Section 6.11 Salary Plan, Pay Periods

Employees shall be paid bi-weekly. Regular salary and overtime will normally be paid within five (5) days after the close of the pay period.

## Section 6.12 Direct Deposit

All employees hired after February 28, 2001, shall be paid only via direct deposit into a bank account. Employees shall have thirty (30) days from the date of hire to submit appropriate information to the Finance Department for the processing of direct deposit pay.

## Section 7. Filling of Vacancies

### Section 7.1 Filling Vacancies

Except as otherwise provided in this Memorandum of Understanding, whenever the City Manager determines that a vacancy in a class described in Appendix "A" of this Memorandum of Understanding is to be filled it shall be filled from employment lists established as a result of competitive examination.

### Section 7.2 Announcements

All examinations for classes set forth in Appendix A of this Memorandum of Understanding shall be noticed to the collective bargaining unit's representative, Teamsters Local 856 IBT, and in other such manner as the City deems appropriate.

The announcements shall specify the following:

- (a) The title and salary range of the class;
- (b) The nature of the work to be performed;
- (c) Preparation desirable for the performance of the work of the class;
- (d) The dates, time, place, and manner of making applications; and
- (e) Other pertinent information.

### Section 7.3 Application Form

Applications shall be made on forms provided by the Personnel Officer. Such forms shall require information covering training, experience, and other pertinent information. All applications must be signed under penalty of perjury by the person applying.

### Section 7.4 Disqualification of Applicants

The City Manager as personnel officer, or the Manager's designee, may reject any application if:

- (a) The application indicates on its face that the applicant does not possess the minimum qualifications required for the position;

(b) The applicant does not meet the minimum age requirement of the position as of the closing date of the recruitment;

(c) The applicant is neither a citizen of the United States nor possesses the status of a permanent resident alien thereof;

(d) The applicant is physically unfit for the performance of duties of the position applied for;

(e) The applicant is addicted to the habitual excessive use of drugs or intoxicating liquor;

(f) The applicant has been convicted of a crime involving moral turpitude where the conduct constituting the offense is related to or reflects upon the fitness of the applicant to perform the duties of the position;

(g) The applicant has made a false statement of any material fact or has omitted any material fact or has practiced or attempted to practice any deception or fraud in the application.

#### Section 7.5 Permissive Rejection

The City Manager as personnel officer, or the Manager's designee, may reject any application if, in that person or group's judgment, the number of applicants for the position is so great that it would be unmanageable to interview all applicants possessing the minimum qualifications. In such cases, the applicants selected for interview or further consideration may be limited to those who, in the judgment of the City Manager or the Manager's designee, possess the qualifications that best fit the needs of the Department concerned.

This shall not apply to applications for positions being filled by promotional examination.

#### Section 7.6 Notice of Rejection

Whenever an application is rejected, notice of such rejection with a statement of reason may be mailed to the applicant by the City Manager or the Manager's designee. In all promotional examinations, when an application is rejected, notice of such rejection with a statement of reason shall be provided within 10 days to the applicant by the City Manager or the Manager's designee.

#### Section 7.7 Defective Applications

Defective applications may be returned to the applicant with notice to amend the same, at the discretion of the Personnel Officer.

#### Section 8. Examinations

### Section 8.1 Nature and Type of Examinations

(a) The selection techniques used in the examination process shall be impartial, of a practical nature, and shall relate to those subjects which, in the opinion of the Personnel Officer, fairly measure the relative capacities of the persons examined to execute the duties and responsibilities of the class to which they seek to be appointed.

(b) Examinations may consist of such recognized personnel selection techniques as achievement tests, aptitude tests, evaluation of personality and background through personal interviews, performance tests, evaluation of daily work performance, work samples, or physical agility tests, or any combination of them.

### Section 8.2 Promotional Examinations

Promotional examinations may be conducted whenever, in the opinion of the City Manager, the needs of the service require. Promotional examinations may include any of the selection techniques mentioned in Section 8.1, or any combination of them. Promotional examinations may also include evaluation of prior City service and accomplishments in special training courses. Any employee who meets the requirements set forth in the promotional examination announcement may compete in the promotional examination process.

### Section 8.3 Conduct of Examinations

(a) The City Manager, or the Manager's designee shall determine the manner and methods by which and persons by whom examinations shall be prepared and administered.

(b) The City Council, upon recommendation of the Personnel Officer, may contract with any competent agency or individual for performing or preparing and administering examinations. In the absence of such a contract, City staff shall perform such duties.

(c) The City Manager shall arrange for the use of public buildings and equipment for the conduct of examinations and shall render such assistance as shall be required with respect thereto.

### Section 8.4 Scoring Examinations and Qualifying Scores

(a) A candidate's score in a given examination shall be the average of that candidate's scores on each competitive part of the examination, weighted as determined by the Personnel Officer. Failure in one part of the examination may be grounds for declaring such applicant as failing in the entire examination or as disqualified for subsequent parts of an examination.

(b) The Personnel Officer may, at the Officer's discretion, include tests which are qualifying only as a part of the examination.

## Section 8.5 Notification of Examination Results and Review of Papers

(a) Each candidate in an examination shall be given written notice of the results thereof, and if successful, of the candidate's final earned score and placement on the employment list.

(b) Any candidate shall have the right to inspect the candidate's own examination paper according to the rules of Human Resources. Any error in computation, if called to the attention of Human Resources within one month after the date of mailing of notices, shall be corrected. Such corrections shall not, however, invalidate appointments previously made.

## Section 8.6 Veteran's Preference

Veteran's preference of 5% of the potential total final score shall be allowed all veterans of the U.S. military organizations if the deadline for filing applications is within five calendar years from the date of discharge from active duty, or as required by the state and federal law. The 5% veteran's preference provision shall not apply to promotional examinations.

## Section 9. Appointments

### Section 9.1 Sources of Appointments to Fill Vacancies

(a) Whenever the City Manager determines that a vacancy in a class described in Appendix "A" of this Memorandum of Understanding is to be filled, it shall be filled by re-employment, transfer, demotion, or from eligibles certified by the City Manager or the Manager's designee from an appropriate employment or promotional list, if available.

(b) Whenever the City Manager determines that a vacancy in a class described in Appendix "A" of this Memorandum of Understanding is to be filled, the City Manager shall determine the availability of employees for re-employment, requests for transfers, or demotion, and of eligibles on employment or promotional lists for the class.

(c) The City Manager shall certify the eligibles available to fill the vacancy by reinstatement, transfer, or demotion, or from a promotional or employment list.

### Section 9.2 Order of Certification

Whenever certification is to be made, the employment lists, if any exist, shall be used in the following order: re-employment list, promotional list, open-competitive list. Whenever there are fewer than three names on a promotional list or seven names on an open-competitive list, the City Manager may make an appointment from among such eligibles or may establish a new list.

### Section 9.3 Appointment

After interview and investigation, the City Manager shall make appointments from among those certified in accordance with Section 12. The City Manager shall thereupon notify the

person appointed. If the applicant accepts the appointment and presents himself/herself for duty within such period of time as the City Manager shall prescribe, the applicant shall be deemed to be appointed; otherwise, the applicant shall be deemed to have declined the appointment.

Section 9.4 Nepotism

(a) No person may be appointed to a position in a department if a member of the immediate family of such person is employed in the department, if the City Manager determines that (a)(1) for business reasons of supervision, safety, security, it would be inappropriate to place one such person under the direct supervision of the other; and (2) the appointment cannot be made so it would not be necessary that one employee be under the supervision of the other; or (b) the placement of both persons in the department involves potential conflicts of interest greater for persons so related than for nonrelated persons, and that such conflicts cannot be resolved by control of duty assignments. The City Manager shall consult with the Union prior to making any such determination.

(b) If such appointment is made, the employees involved shall be assigned, if possible, so that one is not under the direct supervision of the other, or employed to work in conjunction with the other under ordinary circumstances.

(c) If, due to marriage or otherwise, persons employed in a department become members of an immediate family, the department head shall, to the extent possible, assign such persons to duties in such manner that neither is under the direct supervision of the other, and neither is assigned to work in conjunction with the other under ordinary circumstances.

(d) For purposes of this section, "immediate family" includes father, mother, brother, sister, spouse, domestic partner, child, mother-in-law, mother of domestic partner, father-in-law, father of domestic partner, grandparent, grandchild, great-grandparent, great-grandchild, step-child, child of domestic partner, foster child, and step-parent.

Section 10. Probation Period

Section 10.1 Duration

All original and promotional appointments shall be tentative and subject to a probationary period of not less than six months from the date of probationary appointment or promotion.

An employee who is laid off and subsequently appointed as a result of certification from a general employment eligible list to a position in a different classification than that from which laid off shall undergo the probationary period prescribed for the classification to which appointed. Former probationary employees whose names were placed on a re-employment eligible list before they achieved permanent status shall start a new probationary period when appointed from a re-employment eligible list.

Employees who transfer to another position in the same classification shall not be required

to undergo a new probationary period in the position into which transferred.

### Section 10.2 Objective of Probationary Period

The probationary period shall be regarded as a part of the testing process and shall be utilized for close observation of the employee's work, for securing the most effective adjustment of a new employee to the position, and for rejecting any probationary employee whose performance does not meet the required standards of work.

### Section 10.3 Appointment or Rejection of Probationer

(a) During the probationary period an employee may be rejected at any time by the City Manager without cause, without hearing, and without the right of appeal.

(b) Prior to the conclusion of the probationary period, the department head shall file a written statement with the City Manager recommending permanent appointment, rejecting the probationer or requesting an extension of the probationary period as provided in Subsection 10.5.

(c) Prior to the scheduled termination of the probationary period, the City Manager shall notify the probationer in writing as to whether the service of the probationer has been satisfactory and whether the City desires to retain the employee. If the City Manager notifies the probationer that the performance of the latter has been satisfactory, the City Manager shall appoint the probationer to the position on a regular basis, effective upon the completion of the probationary period. If the City Manager notifies the probationer that the performance of the latter has not been satisfactory, the employment of the employee shall be terminated upon such notice, or the City Manager may extend the probationary period for a specific period of time to allow for further observation and evaluation. If the probationary period is extended, the salary step increase for the employee shall be deferred for the period of time of the extension.

(d) Whenever the City Manager rejects a probationer, the written notice of rejection shall advise the probationer as follows:

(1) That if the probationer believes such rejection is because of allegations of misconduct which have been publicly disclosed under such circumstances that the good name, reputation, honor, or integrity of the probationer has been stigmatized, the probationer has the right to a hearing to provide an opportunity to clear the probationer's name; and

(2) That if the probationer believes such rejection is on account of race, color, ancestry, national origin, religion, sex, marital status, sexual orientation, physical disability, participating in the activities of a labor organization, or the exercise of any right guaranteed to the probationer by statute or constitution, the probationer is entitled to a hearing to determine whether such rejection was, in fact, effectuated upon such invalid basis.

The notice shall advise the probationer that the latter may request such hearing by transmitting to the City Manager in writing not later than 15 days from the date of the notice a

request for a hearing. Such request shall specify the grounds upon which the hearing is requested, as set forth in paragraphs (1) and (2) of this subsection. If the probationer does not request a hearing in the manner prescribed by this section within the period allowed, the probationer shall be deemed to have waived any right to such hearing.

(e) The City Manager shall conduct hearings requested pursuant to this section. If the hearing has been requested pursuant to subsection (c)(2), the probationer shall have the burden of proof that the rejection was effected upon an invalid basis. At the conclusion of such hearing the City Manager may sustain the rejection, reinstate the probationer to probationary status if the probationary period has been completed, or reinstate the probationer to probationary status and extend the probationary period if otherwise permissible, if justified by the evidence presented at the hearing.

(f) If, prior to the hearing, the employee presents to the City Manager a written request that the City Manager be disqualified from conducting the hearing, the City Manager shall assign a designee having no supervisory control over the employee to conduct the hearing. At the conclusion of the hearing, the hearing officer shall recommend to the City Manager the disciplinary action to be taken, if any, and the City Manager shall make a determination and promptly notify the employee in writing of such decision.

Section 10.4 Promotional Probation

An employee who has previously completed the requisite probationary period and who is rejected during a subsequent probationary period for a promotional appointment shall be reinstated to the former position from which the employee was promoted; provided that this subsection shall not be construed so as to prohibit the City from discharging any employee during a subsequent promotional probationary period for those reasons and causes set forth in Section 22 of this Memorandum of Understanding.

Section 10.5 Extension

The probationary period may be extended upon the written recommendation of the employee's department head and the approval of the City Manager for one or more extensions, each not to exceed six months duration.

The Union will be notified in writing of extensions of probationary periods.

Section 11. Promotion

The City shall endeavor to fill vacancies by promotion when in the best interest of the service. In the event the City Manager determines to fill a vacancy by promotion, Human Resources shall prepare and administer an examination for those employees holding similar positions in lower classifications. The names of the successful candidates shall be recorded in the order of their standing in the examination on an employment list. Promotional appointments can only be made from the first three candidates on the employment list who are ready and willing to accept the position offered.

If, in the opinion of the City Manager, a vacancy in the position could be filled better by an open, competitive examination instead of a closed, promotional examination, the Manager may call for applications for the vacancy and arrange for an open competitive examination, and for the preparation and certification of an eligible list.

## Section 12. Employment Lists

Employment lists shall become effective upon approval thereof by the City Manager. Employment lists shall remain in effect for one year, unless sooner exhausted, and may be extended prior to their expiration dates by action of the Personnel Board for additional six-month periods but in no event shall an employment list remain in effect for more than two years.

Original appointments can only be made from the list of eligible candidates on the employment list who are ready and willing to accept the position offered.

The name of any person on an employment list may be removed by the City Manager if the eligible person requests such removal in writing, if the candidate fails to respond to a written offer of employment within five business days next succeeding the mailing of notice, which shall be by registered mail, if a subsequent report of a background investigation shows that the person is unsatisfactory, or if the employee has been rejected for appointment three times. If a candidate indicates a desire not to be considered for appointment or for interview, the City Manager remove the name of the candidate from the employment list.

The names of persons on promotional employment lists who resign from the service may be dropped from such lists.

## Section 13. Layoff and Re-employment

### Section 13.1 Layoff

Whenever, in the judgment of the City Council, it becomes necessary to abolish positions, the City Council may abolish any position including those set forth in Appendix "A" of this Memorandum of Understanding, and the employee holding such position or employment may be laid off without the right of appeal. The City Manager may likewise lay off regular employees due to lack of work or funds.

In reduction of force, employees with the least length of service in the classification affected shall be laid-off first; provided, however, that any employee so laid off may elect to be reassigned to a directly related classification with an equal salary scale held by an employee with less service with the City if the senior employee is capable by training and experience of performing the work of the position. As used herein, the following groups of classifications shall be the only ones deemed to be directly related: (1) Accounting and Customer Service Representative I, II and III; (2) Maintenance Worker I and II; (3) Assistant Engineer and Associate Engineer; (4) Librarian I, Librarian II, Library Assistant I and Library Assistant II; (5) Administrative Assistant and Secretary.

When a senior employee is laid off from a classification not directly related to any other classification, such employee may, if the employee elected be assigned to a position in the Maintenance Worker classification held by an employee of less service with the City if the classification from which the senior employee was laid off is of a higher salary scale than that for Maintenance Worker. Such reassignment shall occur only in the event that the senior employee is capable by virtue of training and experience of performing the work of the Maintenance Worker classification.

An employee who is being laid off and who is in a classification due to a voluntary demotion from a higher classification as to which that employee had successfully completed the required probationary period may elect to be reassigned to such higher classification held by an employee with less service with the City.

### Section 13.2 Re-employment

In rehiring, the name of the employee last laid off within two years shall be placed at the head of an employment list for a position in the classification formerly held, and the employee shall be given preference in filling vacancies in that classification, and, if re-employed, shall be placed at the same step of the salary range previously held.

## Section 14. Resignation and Reinstatement

### Section 14.1 Resignation

An employee wishing to leave the competitive service in good standing shall file with the department head at least two weeks' notice of an intention to leave the service. The written resignation shall state the effective date and reason for leaving. The resignation shall be forwarded to the City Manager with a statement by the department head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation.

### Section 14.2 Reinstatement

A permanent employee who has resigned in good standing may, with the approval of the City Manager, be reinstated to a vacant position of the same or similar classification as the previous position within a period of two years from the effective date of resignation. Reinstatement shall be made at the salary step recommended by the department head and approved by the City Manager, but shall not exceed the salary step held at the time the employee left City employment.

The reinstated employee may serve a designated probationary period for that classification prior to becoming a permanent employee regardless of the salary step at which the employee is reinstated.

## Section 15. Demotion

Demotion shall mean the movement of an employee from one class to another class having a lower maximum rate of pay. Demotions can only be made by the City Manager. Demotion may be made to a vacant position as a substitute for layoff. No employee shall be demoted to a position for which that employee does not possess the minimum qualifications. Written notice of the demotion shall be given the employee three days before the effective date of the demotion.

## Section 16. Hours of Work, Overtime, Premium Pay

### Section 16.1 Hours of Work

The regular workweek for employees occupying full-time positions shall consist of forty (40) hours. One 15-minute rest period each shall be observed during the first half and the second half of each regular workday.

(a) An employee of the library, whose regularly scheduled working hours do not provide for two (2) consecutive regular days off within a seven (7) day work period shall be paid a five percent (5%) premium to the regular straight-time rate of pay for each hour actually worked on the day which would regularly constitute one of two consecutive days off.

(b) The City shall provide an employee a minimum of 72 hours written notice of a short-term change in the employee's schedule which does not trigger the meet-and-confer requirements of Section 3 (c) (10). To the extent possible, notice shall be given more than 72 hours in advance of such changes to facilitate the employee's adjustment to this disruption in their normal routine.

### Section 16.2 Overtime

Authorized work performed in excess of 40 hours in one week shall constitute overtime. Authorized work performed in excess of eight (8) consecutive hours, or those beyond the employee's regularly scheduled hours, whichever is greater, in any one (1) day (exclusive of lunch period) shall constitute overtime. Absent extenuating circumstances, all overtime must be approved in advance by a supervisor.

An employee required to work in excess of the regularly scheduled hours of work, as defined in the preceding paragraph, shall be compensated for each overtime hour so worked at the rate of one and one-half (1 1/2) times the employee's regular straight-time rate of pay.

Except in the event of an emergency, an employee who leaves the workplace due to injury or illness shall not be eligible for overtime, call back, or standby pay until the employee's next regularly-scheduled workday.

### Section 16.3 Call Back

An employee recalled to work outside of and not continuous with an employee's regularly scheduled hours shall be paid a minimum of two hours at the rate of 1 1/2 times the employee's regular straight-time rate of pay. An employee shall not receive additional two-hour payments for multiple call backs which occur within one two-hour period.

### Section 16.4 Stand-by Duty

(a) An employee assigned to be on stand-by (excluding employees assigned to the Water Division) to answer calls outside of regularly-scheduled hours shall receive two hours pay at the regular straight-time rate of pay or, at the employee's option, two hours of compensatory time off at the regular straight-time rate, for each 16 hours of stand-by time. (The two regularly assigned operators of sweepers shall not be required to take stand-by.)

In addition to one straight time hour for each eight hours of standby duty, an employee assigned to such stand-by for not less than 16 hours on a holiday shall be entitled to eight straight time hours of pay or compensatory time off.

(b) In consideration for the exclusion of the Water Division from the provisions of Section 16.4 (Stand-by Duty) of this Memorandum of Understanding, the City agrees to continue in effect overtime procedures currently in effect in the Water Division, (i.e. an employee is scheduled to check the City's water facilities each week night and is compensated therefore under the provisions of Section 16.3 (Call Back) and an employee is scheduled for an eight (8) hour work shift on Saturday and Sunday each week at the overtime rate) until such time as the City determines that change of this procedure is required. Upon the determination by the City to change the assignment of employees to check the water facilities, the City shall provide at least three (3) months written notice thereof to the Union. Ninety days after delivery of such notice, Water Division employees shall be subject to the same Stand-by Rules as other employees pursuant to this Memorandum of Understanding and shall no longer be excluded from the provisions of Section 16.4 The City will give consideration to standby arrangements appropriate to the Water Division's needs.

### Section 16.5 Stand-by Living Radius

Employees occupying the classifications of Maintenance Worker I/II, Maintenance Technician, and Pump Mechanic I/II shall, for purposes of standby assignment, be subject to the residency conditions detailed in "Stipulation and Order for Judgment, Case No. 347947," herein incorporated with the map in Appendix "B." Such employees may be provided a City vehicle for the duration of said assignment, subject to remaining administrative policy provisions regarding use of City vehicles.

### Section 16.6 Compensatory Overtime

Subject to approval by the department head, an employee may take compensatory time off for overtime worked in lieu of receiving overtime pay therefore. Except as noted in Section

16.4 regarding standby, compensatory overtime shall be calculated at the same rate as overtime pay. No employee may accumulate more than 40 hours compensatory time. In the event the employee earns comp-time in a pay period that will result in that employee exceeding the 40-hour balance, the additional hours (except those earned as straight-time compensatory time for standby duty) will be paid as overtime pay for that pay period.

#### Section 16.7 Flexible Working Hours

The department head may, at the request of an employee, authorize such employee to work a schedule of 40 hours per week where some workweek hours per week are other than between 8:00 A. M. to 5:00 P. M., if the department head finds such work schedule is consistent with the operational needs of the department. Approval of a flexible working schedule shall be subject to approval by the department head and City Manager in writing and a copy shall be placed in the employee's personnel file. Initial approval of a flexible work schedule does not entitle or guarantee the employee the right to maintain that flexible work schedule and approval of a flexible work schedule does not limit the rights of management to reassign work hours should the operational needs of the department change on a permanent or temporary basis. To the extent possible, the City agrees to provide notice ten (10) working days in advance of a modification in an employee's previously approved flexible work schedule except for short term modifications or extenuating circumstances.

#### Section 16.8 Weekend Work

Where the seasonal operating needs of a department make it necessary for some employees to work on Saturday and/or Sunday in lieu of the regular Monday through Friday workweek, such weekend work assignments shall be made on a rotational basis based on length of service with the City. To the extent possible, the assignment of weekend work shall be scheduled in advance of the work season.

#### Section 17. Holidays

##### Section 17.1 Holiday Pay

Regular full-time employees shall be entitled to observe all authorized holidays at full pay, not to exceed eight hours for any one day, provided they are in a pay status on both their regularly scheduled workdays immediately preceding and following the holiday.

##### Section 17.2 Authorized Holidays

(a) The following are the eleven (11) authorized holidays:

New Year's Day  
Martin Luther King Day  
Presidents Day

Veterans Day  
Thanksgiving Day  
Day after Thanksgiving Day

Memorial Day  
Independence Day  
Labor Day

Day before Christmas Day  
Christmas Day

(b) If a holiday falls on Sunday, such holiday shall be observed on the Monday following. If a holiday falls on a Saturday, such holiday shall be observed on the preceding Friday.

(c) The day before Christmas Day shall be observed as follows:

If Christmas Day falls on	Day before Christmas is observed on
Monday	Tuesday following
Tuesday	Monday before
Wednesday	Tuesday before
Thursday	Friday after
Friday	Thursday before
Saturday	Thursday before
Sunday	Friday before

(d) Holidays for library employees shall be observed in the following manner:

(1) If a holiday falls on a Friday or Saturday, employees who would be otherwise normally scheduled to work on Saturday shall be scheduled to get Friday, Saturday, and Sunday of that weekend as days off.

(2) If a holiday falls on a Sunday, it shall be observed on the following Monday. Employees who would otherwise be normally scheduled to work the previous Saturday would be scheduled to work the previous Friday instead.

(3) If a holiday falls on a Monday, employees who would otherwise normally be scheduled to work on Saturday shall be scheduled to work on the previous Friday and shall be scheduled to get Saturday, Sunday, and Monday as days off.

(4) If the City exercises its right to reschedule employees and open the library on a holiday weekend, employees who work on the holiday shall receive compensation as described in Section 17.3. If an employee works on such weekend, does not work on the holiday, and does not receive a day off with pay during such weekend, the employee will be allowed to take a day off with pay at a later time.

### Section 17.3 Work Performed on a Holiday

Any regular full-time employee who is required to work on any of the holidays specified in Subsection 17.2 above shall, in addition to receiving regular pay for such holiday, be paid two and one-half (2-1/2) times the employee's regular straight-time rate of pay for all hours actually

worked on such holiday; provided, however, that employees assigned to standby duty as provided in Subsection 16.4 (Stand-by Duty) above on such holiday shall receive one and one-half (1-1/2) times their regular straight-time rate for all hours actually worked on such holiday. For purposes of this section, holidays will be those days on which the holiday is actually observed.

Section 17.4 Holiday During Vacation

In the event any of the holidays specified in Subsection 17.2 above occurs while an employee is on vacation, the holiday shall not be charged to vacation.

Section 18. Vacation Leave

Section 18.1 Vacation Allowance

As of March 12, 2001, regular full-time employees shall accrue vacation leave as follows:

Length of Service	Vacation Hours Earned Biweekly
0-5 years	3.078 hours
6-10 years	4.615 hours
11th year	4.925 hours
12th year	5.229 hours
13th year	5.538 hours
14th year	5.848 hours
15th year	6.152 hours
16-20 years	6.460 hours
21-24 years	6.770 hours
25th year or more	7.080 hours

Section 18.2 Accumulation

No employee may accumulate more than 280 hours vacation leave; provided, however, that an employee may request permission from the City Manager to accumulate additional hours for a specific purpose. Once an employee has accumulated 280 hours (or the maximum authorized by the City Manager), that employee will not accumulate any additional vacation time until the employee’s leave balance drops below 280 hours.

An employee whose vacation leave balance exceeds 280 hours as of March 12, 2001, will have the hours in excess of 280 transferred to a separate account. Such employee will have six months to develop a plan for using the balance in this account. Any hours not used will be paid to the employee at the employee’s hourly rate as of March 12, 2001.

The City Manager may require any employee to use at least 80 hours vacation leave in a calendar year to the extent such vacation leave has been accumulated. The City Manager may also allow an employee to accumulate vacation hours in excess of 280 if the employee’s

vacation request has been denied due to departmental operating needs.

### Section 18.3 Pay upon Termination

Employees who terminate employment shall be paid in a lump sum for all unused vacation leave accrued in accordance with the provisions of this section prior to the date of termination.

### Section 18.4 Scheduling

The times during the calendar year at which an employee shall take vacation shall be determined by the department head with due regard for the wishes of the employees and particular regard for the needs of the service with seniority governing when conflicts arise.

## Section 19. Leaves of Absence

### Section 19.1 Sick Leave

(a) Purpose. Sick leave shall not be considered a privilege which an employee may use at the employee's discretion, but shall be allowed in case of necessity and actual sickness or disability, except as provided in paragraphs (4) and (5) of subsection (b).

(b) Rate and conditions of accrual and utilization of sick leave:

(1) For full-time employees, sick leave shall be accrued at the rate of eight hours for each calendar month of service, except as provided in paragraph (3).

(2) Unused sick leave shall be accumulated at the rate of ninety-six (96) hours a year. There is no maximum amount which an employee may accrue.

(3) Sick leave, vacation leave, and holiday leave shall not accrue when the employee is on leave without pay.

(4) Employees of this bargaining unit shall be eligible to utilize sick leave upon accrual.

(5) Sick leave may be used for any disability, whether temporary or permanent, by injury or illness arising out of and in the course of the duties of the employee after expiration of salary continuation as provided in Section 19.2.

(6) In the event sick leave is taken by an employee instead of a leave of absence for industrial disability granted by state law where there is a bona fide dispute as to whether the disability is industrial, and such dispute is resolved in favor of the employee, any sick leave which was erroneously deducted from the employee's accumulated sick leave shall be restored to the employee.

(7) Procedure. In order to receive compensation while absent on sick leave, the

employee shall notify an immediate superior or the department head prior to the employee's scheduled starting time, or as outlined in written departmental procedures, if reasonably possible. The employee shall provide such notice daily unless other arrangements have been made. If an employee becomes ill while away from the employee's residence, the employee shall notify a supervisor of the employee's location, including address and telephone number. If the employee has previously been counseled or warned in writing by the supervisor regarding abuse of sick leave, the supervisor may direct the employee to return to the employee's residence if circumstances permit. The supervisor shall not unreasonably require the employee to return to the employee's residence.

(8) Signed statement. When an employee has been absent on sick leave, upon return to work the employee shall submit to the department head a personally signed statement indicating the nature of the illness, injury or disability. Such statement shall be on a form prescribed by the City for such purpose.

(9) Medical certificate. When an employee returns after an absence on sick leave in excess of one work day, the department head may require the employee to submit a certificate signed by a licensed physician indicating the nature of the illness, injury, or disability, in addition to the signed statement required pursuant to paragraph (8). If the employee has previously been counseled or warned in writing by the supervisor regarding abuse of sick leave, such certificate may be required by the department head after absence on sick leave for any amount of time. The City agrees to pay for the cost of obtaining said certificate to the extent that the employee's health insurance does not do so. The employee shall make every effort to take advantage of available insurance coverage.

(10) Duty to remain at home. Whenever an employee who has been previously counseled or warned in writing by the supervisor regarding abuse of sick leave is absent on sick leave, such employee shall remain at the employee's residence, except where hospitalized or attending to a medical appointment, unless the employee has made special arrangements with the employee's supervisor to be away from such residence. In considering any such special arrangement, the supervisor shall ascertain the nature of the illness, injury, or disability; the location(s) at which the employee is to be present; and the reason(s) the employee seeks to remain at a location other than the employee's residence. The supervisor shall only approve a special arrangement if there are legitimate reasons therefore, and if it would not deter the employee's ability to recover.

(11) Availability for notification.

(a) An employee who is absent on sick leave is expected to be available to answer telephone calls related to the illness, injury, or disability, or work-related matters. No employee shall refuse to answer a telephone call from a supervisory employee for that purpose.

(b) If the employee has previously been counseled or warned in writing by the supervisor regarding abuse of sick leave, the employee shall be available to receive visits from a supervisor related to the illness, injury, or disability or work-related matters. No such

employee shall refuse to receive a visit from a supervisory employee for such purposes.

(12) Suspension of sick leave. When, in the sole opinion of the City Council, a job action exists, it shall have the authority to suspend the use of sick leave benefits for the duration of the job action, retroactive to the beginning of such job action. The City Manager shall have sole discretion to grant exceptions for employees the Manager believes to have been ill or injured prior to the job action. As used herein, "job action" includes, but is not limited to, any strike, slowdown, stoppage of work, curtailment of production, concerted refusal of overtime work, refusal to operate designated equipment, or to perform customary duties due to any labor dispute, or any concerted refusal to appear at any assigned work station because of claimed or asserted sicknesses or disabilities.

(13) Sick leave on holidays. If an employee is absent on paid sick leave and a holiday occurs during such absence, the day shall be treated as a holiday taken and such pay shall not be charged against the employee's sick leave credit.

(14) Sick leave payout upon termination. In the event an employee's employment with the City is terminated as a result of retirement, death, or abolition of position, the following amount of unused sick leave shall be paid on termination of employment.

(a) Employees who have completed twenty (20) or more years of City service as a full-time employee: fifty percent (50%) of unused sick leave, or six hundred (600) hours, whichever is less.

(b) Other employees: Fifty percent (50%) of unused sick leave, or four hundred eighty (480) hours, whichever is less.

(15) Family sick leave. Upon the approval of the department head, an employee may use leave time as allowed by state and federal law (presently one half of earned time [48 hours]), when illness of a person of the employee's immediate household, or immediate family as defined in Section 19.3 normally residing within the employee's immediate household, or when the illness of the employee's husband, wife, son, daughter, mother or father, not normally residing within the employee's immediate household requires the employee to take care of such sick person.

## Section 19.2 Industrial Disability Salary Continuation Program

Any regular employee who has suffered any disability arising out of and in the course of employment, as defined by the workers' compensation laws of the State of California, may be entitled to salary continuation while disabled without loss of compensation for the period of such disability to a maximum of 60 calendar days. Such salary continuation may be extended by the City Manager not to exceed one year. The City Manager may call for medical examinations as frequently as would be reasonably necessary, given the nature and extent of the injury and the degree of change of condition within a given period of time, but shall not schedule examinations so frequently as to constitute harassment of the employee. The City may terminate industrial disability salary continuation if a disability retirement is initiated.

### Section 19.3 Bereavement Leave

In the event of a death in the immediate family of an employee, the employee shall, upon request, be granted such time off with pay as is necessary to make arrangements for the funeral and attend same, not to exceed three regularly scheduled working days. This provision shall not apply if the death occurs while the employee is on leave of any kind other than vacation or compensatory time off. Only in the event that the funeral takes place at a location more than 150 miles away from the City of San Bruno, reasonable time off for travel will be allowed, not to exceed one regularly scheduled working day for travel in each direction.

For the purposes of this provision, the immediate family shall be restricted to father, mother, brother, sister, spouse, domestic partner, child, mother-in-law, mother of domestic partner, father-in-law, father of domestic partner, grandparent, grandchild, stepchild, child of domestic partner, foster child, and stepparent. At the request of the City, the employee shall furnish a death certificate and proof of relationship.

Bereavement leave applies only in instances in which the employee attends the funeral, or is required to make funeral arrangements, but is not applicable for any other purpose, such as settling the estate of the deceased.

In addition, an employee may use sick leave, subject to the same limitations as Bereavement Leave, upon the death of an aunt, uncle, nephew, niece, great-grandchild, great-grandparent, or other person with the approval of the department head.

### Section 19.4 Leave of Absence

(a) The City Manager may grant a regular employee a leave of absence without pay or benefits not to exceed one year. A request for such leave shall be in writing and shall be approved or denied by the City Manager in writing.

(b) The City Manager may terminate such leave of absence prior to the scheduled expiration of the leave upon notice to return to duty if the City Manager determines that the circumstances justifying the leave do not exist or if the needs of the City justify termination of the leave.

(c) A denial of a request for leave of absence, or a premature termination of such leave, may be appealed to the City Council.

(d) Upon expiration of a regularly approved leave, or within a reasonable period of time after notice to return to duty, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report promptly at its expiration, or within a reasonable time after notice to return to duty, shall be cause for discharge.

### Section 19.5 Jury Duty Leave; Leave for Court Appearances

(a) Any employee who is called and required to serve as a trial juror shall be entitled to leave

with pay during the period of such service or while necessarily being present in court as a result of such call. Under such circumstances, the employee shall be paid the difference between the employee's full salary and any payment received, except travel pay, for such duty.

(b) When, in the opinion of the department head, an employee's absence from duty would pose an undue burden or hardship upon the efficient operation of the department, the department head may request relief from the appropriate agency for the employee serving as a juror.

(c) An employee who has been subpoenaed as a witness in an official City capacity shall be paid the employee's regular salary, less any witness fee received.

(d) An employee who has been subpoenaed as a witness in a private capacity shall not be eligible for jury or court leave for this purpose. Such an employee may use other forms of leave, including vacation, personal leave bank or compensatory time.

#### Section 19.6 Military Leave

(a) Except as provided in subsection (b), military leave shall be granted in accordance with the provisions of state law. All employees entitled to military leave shall give the appointing power an opportunity within the limits of military regulations to determine when such leave shall be taken.

(b) No employee who is entitled to a temporary military leave of absence pursuant to the Military and Veterans Code shall be entitled to salary or compensation from the City for the period of such leave. Any employee who is going to take such leave shall, not less than seven days prior to the date of commencement of the leave, report to the Director of Finance in writing the employee's name, department, name and location of military unit, dates when military leave will be taken, and place where such employee will be stationed during such leave. The employee shall also report the estimated amount of salary or compensation the employee expects to receive for such military duties. Upon return from temporary military leave, the employee shall either (1) assign to the City the military paycheck, in which case the employee's next City paycheck would be in the amount to which the employee would have been entitled without deduction on account of military leave; or (2) present to the City a pay voucher signed by the appropriate military authorities indicating the amount of salary or compensation received for such temporary military leave in which case the employee's next City paycheck shall reflect a deduction from the amount to which the employee would have otherwise been entitled in the amount of the military salary or compensation for the temporary leave.

(c) Subsection (b) shall only apply to persons hired after the effective date of this Memorandum of Understanding, July 1, 1983.

#### Section 19.7 Personal Leave Bank

Each employee of this bargaining unit shall have a Personal Leave Bank. The bank shall

be maintained by the Finance Department and reported to the employee by means of a payroll stub entry.

New employees shall begin with a balance of zero (0). Each year on the employee's birthday, the employee's leave bank shall be credited with eight (8) hours of personal leave. The leave bank shall also be credited with eight (8) hours of leave each year on February 12 and September 9, in recognition of prior holidays for Lincoln's Birthday and Admission Day, respectively. Similarly, on Good Friday each year the employee's leave bank shall be credited with four (4) hours of leave.

An employee desiring to take personal leave must make such request in writing to the department head at least seven (7) days prior to the proposed leave, unless otherwise agreed to by the City. Approval of such time off shall be subject to the operating requirements of the department in which the employee works.

Employees will be permitted to accumulate up to a maximum of forty-eight (48) hours in personal leave. An employee whose personal leave bank exceeds 48 hours as of March 12, 2001, will have the hours in excess of 48 transferred to a separate account. Such employee will have six months to develop a plan for using the balance in this account. Any hours not used will be paid to the employee at the employee's hourly rate as of March 12, 2001.

Employees will also be allowed to borrow against future accruals by overdrawing the bank by up to twenty-four (24) hours. Upon termination of employment, an employee shall be paid in a lump sum for all hours remaining in the leave bank, at the employee's final straight-time rate. In the event that an employee leaves City employment with an overdrawn leave bank, the employee shall reimburse the City for the deficit, at the employee's final straight-time rate.

#### Section 19.8 Catastrophic Leave

Employees of this bargaining unit may voluntarily donate vacation leave, holiday leave and compensatory time off to a common bank from which other employees in the bargaining unit may draw in case of their personal illness when they have exhausted sick leave. Catastrophic illness or injury shall be defined for this purpose to mean a life threatening or debilitating illness or injury.

The City may require that the catastrophic nature of the condition be confirmed by a doctor's report. Donated leave will be credited to the receiving employee's sick leave balance on an hour for hour basis and shall be paid at the rate of pay of the receiving employee.

#### Section 19.9 Leave with Pay, Extenuating Circumstances

(a) Occasionally, due to the 24 hour nature of City activities, there are emergency situations [flooding, pipe breaks, trees down, etc.] which can result in the call back of duty personnel, standby personnel, and in some cases, all available personnel. In the interest of

responsiveness to the emergency call out situations and concern for worker safety and compliance with State and Federal regulations governing workplace safety, the City has established leave with pay - extenuating circumstances.

(b) This leave provision shall only apply to non-FLSA Exempt employees in this bargaining unit.

(c) Eligible employees who are called back to work during the employee's normal sleeping period shall be eligible to receive time off with pay. Employees who have been called out or worked overtime during the time period of six (6) hours after and three (3) hours prior to the employee's normally scheduled work day shall be eligible for such leave.

Time off with pay shall be permitted during the employee's normally assigned shift on an hour for hour basis, with consideration given to continuous hours worked outside of the eligible hours, not to exceed the number of hours of the employee's regularly scheduled work shift.

Employees using this paid time off will elect to report to work at a later start time or leave work earlier than normally scheduled in the next regular work day. If a significant number of employees were called out, the supervisor and/or manager shall schedule whom continues working and whom reports for work later in the next workday so as to provide for a minimum staffing level necessary for efficient operations.

(d) As a general rule, and except in extreme emergency situations, employees shall not work longer than fifteen (15) consecutive hours.

(e) This program shall be administered by the appropriate Department Head, subject to authority provided by the City Manager. The appropriate supervisor must note the extenuating circumstance for the Department Head's approval on the affected employee's time sheet.

The affected employee's supervisor has the final determination as to whether an employee continues working and leaves work earlier in the normally scheduled workday or returns home to sleep and report to work later in the normally scheduled workday. The decision of the supervisor shall be based on organizational need and the affected employee's ability to continue working in a safe manner. The decision of the affected employee's supervisor shall be final and binding.

## Section 20. Health and Welfare

### Section 20.1 Health & Welfare Trust Fund

Each regular full-time employee and each permanent part-time employee of this unit shall become eligible to participate in 'Teamsters Local Union No. 856 Health and Welfare Trust Fund', provided, however, that participation in the fund shall not be denied to eligible employees who are not members of the Union. Temporary employees and temporary part-time employees who are employed by the City for a period of ninety (90) days shall also be

eligible to participate in said fund.

For purposes of providing health and welfare benefits for regular full-time and permanent part-time employees subject to this MOU the City shall contribute an agreed upon amount to the trust fund on a monthly basis on behalf of each eligible employee for actual costs incurred by such Fund to provide and maintain at existing levels of coverage hospital, medical, dental care, prescription drugs, vision care, and retiree health benefits.

An eligible employee with respect to whom monthly contributions are required shall mean any employee on the payroll on the first day of any calendar month who has been on the payroll of the City eighty (80) hours or more during the preceding calendar month. Said contribution shall institute full compliance with and full performance of all obligations of the City to provide health and welfare benefits for its employees.

(a) Effective 11/1/01 the City will contribute up to \$616.00 per month per employee toward Health and Welfare coverage, upon receipt of documentation of cost increases from the Teamsters Health and Welfare Trust Fund.

(b) Effective 11/1/02, the City's monthly contribution may increase by up to four percent (4%) upon receipt of documentation of cost increases.

(c) Effective 11/1/03, the City's monthly contribution may increase by up to four percent (4%) upon receipt of documentation of cost increases.

(d) In recognition that the current contribution rate for health & welfare premiums is \$38.00 lower than the projected \$616.00 rate level for year 2000, the City agrees allow this \$38.00 carryover credit balance to be used to offset future premium increases which may exceed the identified annual 4% adjustments. This continues the process of providing for a carryover credit when actual costs required by the Fund do not exceed the agreed upon maximum contribution rate. As an illustration, the maximum rate allowed for November 1, 2002 is \$640.64. If the rate requested with documentation called for a rate of \$652.50, the \$11.86 above the agreed upon maximum would be covered by utilizing the carryover credit balance fund of \$38.00. In this illustration, use of the \$11.86 credit would reduce the \$38.00 carryover credit balance to \$26.14 over the remainder of the term of the MOU.

(e) A request for contributions up to the maximum allowable amount shall be made by the Union to the City no less than thirty (30) days in advance of the effective date and shall be supported by evidence of Trust Fund documentation reflecting actual increased costs. This adjustment shall take effect within thirty (30) days after notification by the Union to the City. No other adjustments shall be permitted during the term of this MOU.

(f) During the term of this MOU the parties herein reserve the right to request the other party to meet and confer on the subject of this section for the purpose of reviewing and considering a competitive proposal from the requesting party for the obtaining of equal or comparable health and welfare benefits for covered employees at no additional or less cost to the City.

## Section 20.2 Life Insurance

(a) The City shall provide, at its expense, a term life insurance group policy for employees in classifications set forth in Appendix "A" hereof in an amount equal to the employee's annual base salary as stated in "Appendix A" of this MOU. Income tax consequences, in conformance with IRS regulations, will be the responsibility of the employee. All employees earning under \$25,000, will have a life insurance benefit of \$25,000.

(b) Said employees shall be entitled to purchase, at their own expense, additional term life insurance to the extent permitted by the policy carrier under such terms and conditions as are customarily imposed by such carrier in its normal course of business.

(c) Subject to agreement with the mid-management and management bargaining units, the City agrees to provide Level IV 1959 Survivor's Benefits to members of this bargaining unit. This benefit has a monthly employee cost (currently \$2.00), determined by PERS, and a rate based on actuarial valuation to the City on a monthly basis.

## Section 20.3 Retirement

The retirement system in effect between the City of San Bruno and the Public Employee's Retirement System (PERS) on behalf of eligible full-time and permanent part-time employees of this unit shall be 2% at 55 for all eligible employees. Final compensation for purposes of calculating retirement benefits shall be based upon the highest average annual compensation earned by the employee the last consecutive year of employment preceding the date of retirement.

If during the term of this agreement, new PERS retirement benefits should become available for this bargaining unit, and if other bargaining units affected by those benefits have the option to reopen negotiations on the issue of retirement benefits, this bargaining unit shall have the right to ask the City to reopen negotiations on the issue of retirement benefits. It is understood that such re-opener may allow the City to modify other economic benefits contained in this agreement to provide improved retirement benefits.

In lieu of Sick Leave Payout Upon Termination provisions previously provided in Section 19.1 (b) (14) of this MOU the City agrees, to the extent permitted by PERS and at such time as permitted by PERS, to amend our contract for inclusion of a Credit for Unused Sick Leave retirement option as outlined in Government Code section 20862.8). Until such is implemented the previously existing conditions of Section 19.1 shall be operable. The cost of the PERS sick leave buyout option shall be paid by the City.

## Section 20.4 Deferred Compensation

(a) If employees in other bargaining units are offered deferred compensation plans other than that which the employees in this bargaining unit have previously been offered, the employees in this bargaining unit shall also be allowed to participate in any such additional plans.

(b) The City agrees to permit employees of the bargaining unit, to the extent permitted by law, to voluntarily participate in a deferred compensation program as provided for in Resolution 1984-48 AUTHORIZING AND APPROVING A DEFERRED COMPENSATION PLAN FOR PARTICIPATING EMPLOYEES.

(c) The City agrees to meet and confer with the union, upon their request, should the Internal Revenue Code be amended so as to adversely impact the intended purpose of the adopted deferred compensation program.

#### Section 20.5 State Disability Insurance As An Employee Paid Benefit

(a) To the extent permitted by the State of California, the City agrees, as a 'fully employee-paid' benefit and handled as an authorized employee payroll deduction, to enroll qualified employees subject to this Memorandum of Understanding into the State Disability Insurance (S.D.I.) program.

(b) To facilitate a coordination of benefits with regard to the use of authorized sick leave accruals used by an employee during such period(s) of time when such employee is drawing disability insurance benefits relating to paragraph (a) the City shall, upon actual enrollment in the S.D.I. program and after meeting and conferring with the Union adopt a schedule of sick leave reinstatement for S.D.I. funds received from an employee.

(c) In no event shall an employee, during absence from work for an illness or disability where S.D.I. benefits are paid, earn an amount of compensation greater than the straight-time wages regularly payable if the employee had actually worked.

#### Section 20.6 Health Insurance After Retirement from City Service

The City is agreeable to consider development of a trust fund or annuity option with a third-party provider to allow employees to use sick leave payoff or employee contributions at retirement as a vehicle to provide for payment of retiree medical coverage.

### Section 21. Safety

#### Section 21.1 Observance of Safety Rules and Regulations

Both the City and the Union shall expend every effort to ensure that work is performed with a maximum degree of safety, consistent with the requirement to conduct efficient operations.

Each employee covered by this memorandum agrees to comply with all safety rules and regulations in effect and any subsequent rules and regulations that may be adopted. Employees further agree they will report all accidents and safety hazards to the appropriate management official immediately. Any employee having knowledge of or who is a witness to an accident shall, if requested, give full and truthful testimony as to same.

## Section 21.2 Safety Equipment

(a) The City shall continue to supply employees with safety equipment required by the City and/or CAL OSHA. All employees shall use City supplied safety equipment only for the purposes and uses specified under applicable safety rules and regulations.

(b) Special Purpose Footwear:

Special purpose footwear, required by the city, shall be worn during all hours worked.

(1) Such special purpose footwear, in a basic style determined by the City and from a source designated by the City, will be provided on an 'as needed' basis. Repair or replacement shall be at the option of the City.

An employee, upon request, may be provided with a style approved by the city which is greater in cost than the basic style, however, the employee shall be responsible to pay the additional costs incurred. In adopting or changing the basic style for special purpose footwear, consideration will be given by the City to current practices.

## Section 21.3 Safety Program

The City shall establish a safety committee and the Union shall have a minimum of two employee representatives on the committee.

## Section 22. Discipline

The City may discharge, suspend, demote, reduce pay or otherwise discipline any employee for cause. No employee shall be discharged unless a Letter of Reprimand shall previously have been given to such employee regarding the employee's work or conduct, except that no such prior warning notice shall be required if the cause for the employee's discharge is dishonesty, insubordination, use of illicit drugs, use of alcoholic beverages related to employment, or failure to perform work as required.

In cases where a prior Letter of Reprimand is required prior to discharge, such discharge shall not necessarily have to be based on the same type of misconduct as that which gave cause for the prior Letter of Reprimand. Any discharged, suspended, or demoted employee shall be furnished the reasons for such action in writing with a copy of such letter furnished to the Union. In the event an employee feels that the discharge, suspension or demotion is unjust, the Union shall have the right to appeal the case through the grievance procedure within five working days from the date the employee was notified of such action.

Probationary employees may be discharged in accordance with Section 10 of this Memorandum of Understanding. Such discharge shall not be subject to the grievance procedure.

## Section 22.1 Letters of Reprimand Not Subject to Grievance Procedure

Notwithstanding any other provision of this MOU, a Letter of Reprimand issued by the City to any employee shall be handled only in accordance with the provisions of this Section, and shall not be subject to the grievance procedure as provided in Section 25.

(a) The employee shall have thirty (30) days within which to file a written response. Such written response shall be attached to, and shall accompany the Letter of Reprimand.

(b) A Letter of Reprimand, shall be purged from the employee's work record after retention for a period of twenty-four (24) months. This provision shall include removal of Letters of Reprimand issued prior to December 1, 1986.

(c) Within ten (10) calendar days after receipt of a Letter of Reprimand, the employee may, in writing, appeal such to the City Manager for administrative review. The City Manager shall, after affording the employee the opportunity to personally meet with the City Manager, consider the basis for issuance and such written and/or oral objections presented by the employee. Thereafter, the City Manager shall either affirm, rescind, or otherwise modify the disciplinary action.

(d) In the event a Letter of Reprimand, issued subject to this section, is subsequently used to evidence that progressive disciplinary action has been considered in determining the extent of a more severe disciplinary action such letter(s), with any employee response attached thereto as provided in paragraph "A" of this section, shall be submitted on appeal to the reviewing authority for such consideration as the reviewing authority deems appropriate.

## Section 23. Pre-disciplinary Hearings

(a) No regular employee shall be demoted, suspended, discharged, or be subjected to a pay reduction for a disciplinary purpose except in accordance with the provisions of this section; provided, however, that this section shall not apply to suspensions of five days or less.

(b) Whenever the City Manager proposes to demote, suspend, or discharge a regular employee in a case in which this section is applicable, the City Manager shall conduct an informal hearing at which the employee shall have the right to respond to the charges. The City Manager shall provide the employee with written notice of the hearing not less than five days prior thereto. The notice shall state the nature of the proposed disciplinary action and the reasons therefore. The notice shall also include a copy of the charges and materials upon which the proposed action is based.

(c) At the hearing, the employee shall have the right to present an oral or written response to the proposed action. Thereafter, the City Manager shall determine, based upon such response and the materials upon which the proposed action was based, whether to impose the action initially imposed, lesser action, or to take no action. The City Manager shall promptly notify the employee in writing of such decision.

(d) If, prior to the hearing, the employee presents to the City Manager a written request that the City Manager be disqualified from conducting the hearing, the City Manager shall assign a designee having no supervisory control over the employee to conduct the hearing. At the conclusion of the hearing, the hearing officer shall recommend to the City Manager the disciplinary action to be taken, if any, and the City Manager shall make a determination which need not be the same as the recommendation and promptly notify the employee in writing of such decision.

## Section 24. Suspension

### Section 24.1 Suspensions without Pay

An employee in a classification of employment set forth in Appendix "A" hereto may be suspended without pay for a disciplinary purpose.

(a) A department head shall have the power to suspend a subordinate employee without pay for not more than five work days. The department head shall immediately notify the City Manager of the suspension in writing. The City Manager shall have the power to uphold, rescind, reduce, or otherwise modify the disciplinary action.

(b) The City Manager shall have the power to suspend a subordinate employee for an amount of time the City Manager deems appropriate.

(c) It is the intent of this section to allocate to the department head the power to impose minor suspensions without the approval of the City Manager, but with immediate notice to the Manager, to enable the department head to take immediate action to remedy employee misconduct which may pose an immediate threat to the health, safety, or welfare of other employees or to the public at large.

### Section 24.2 Administrative Leave With Pay

The City Manager, a department head or immediate supervisor shall have the power to place a subordinate employee on Administrative Leave With Pay status under the following circumstances:

(a) When under investigation of a matter in which the employee may be involved which may lead to disciplinary action against the employee; or,

(b) Pending consideration of possible disciplinary action against the employee; or,

(c) Where the employee's continued presence would, in the judgment of the City, jeopardize the health or safety of the employee or others.

An immediate supervisor placing an employee on such leave shall immediately notify the appropriate department head, who in turn shall immediately notify the City Manager. The City Manager has the power to rescind, extend or otherwise modify the employee's status.

## Section 25. Grievance Procedure

(a) Definition. A grievance shall be defined as any dispute which involves the interpretation of any provision of this Memorandum of Understanding during its term, or any provision of the Personnel Rules, or any applicable written departmental rules, excluding all ordinances, resolutions, rules and regulations, the subject of which is not specifically covered by the provisions of this Memorandum of Understanding. Such excluded ordinances, resolutions, rules and regulations shall not be subject to the grievance procedure set forth in this section.

(b) Initial presentation. The initial (first level) presentation of a grievance shall be to the immediate supervisor of the employee claiming to have a grievance. The grievance may be either oral or in writing. If made in writing, the grievance shall comply with the requirement of subsection (c) for a formally presented grievance.

(c) Formal presentation. The formal presentation of a grievance shall be written and shall state which provision of this Memorandum of Understanding has been misapplied to the employee's detriment, and shall indicate the redress sought. The grievance shall be signed by the individual or Union presenting the grievance. In the event more than one individual is alleged to be aggrieved, the grievance may be signed by a duly authorized representative of the Union, in which case the grievance shall indicate the names of the persons on whose behalf it is filed. In the event the person to whom the grievance is presented determines that the grievance is defective on its face, that person shall reply in writing to the filer within 12 days after receiving the grievance, indicating in writing the specific defects. The reply shall specify that the grievant has 12 days to correct the defects or the grievance shall be deemed to be withdrawn. If the grievance is not corrected within said 12-day period, it shall be deemed to have been withdrawn.

(d) Time limits. A grievance shall be filed within 15 days of the incident or occurrence about which the employee claims to have a grievance. The grievance may be filed no later than 30 days following such incident or occurrence if the employee can show that within 15 days of the occurrence the employee did not have actual knowledge of the occurrence or had no reason to know of it.

(e) Representation. The grievant shall have the right at all steps of the grievance procedure to be represented by a person or organization of the grievant's own choosing; provided, however, that if the grievant is not represented by the Union, the grievant shall present to the City a written waiver of the right to be represented by the Union and shall, in writing, hold the Union harmless from any liability arising from the lack of Union representation.

(f) Effect of a grievance. The making or filing of a grievance shall not prevent the City or any authorized employee of the City from taking action deemed appropriate, nor shall it have the effect of suspending action previously taken even though the action may involve or be part of the subject matter of the grievance.

The fact that a probationary employee has filed a grievance or has authorized the Union to file a grievance shall not be taken into account in any evaluation of that employee's work

performance. The failure of an individual to file a grievance in a particular situation does not of itself establish a past practice.

(g) Disciplinary matters. In the event an employee feels that a discharge, suspension, or demotion is unjust, the employee shall have the right to appeal the case through the grievance procedure by filing a grievance through the City Manager within 12 days from the date the employee was notified of the action.

Untimely appeals shall not be entertained under the grievance procedure; provided, however, that the City Manager shall have sole discretion to allow the filing of an appeal of a disciplinary action with 30 days from the date the employee was notified of the action if the City Manager determines that the failure of the employee or the employee's representative to file the appeal within the normal 12-day period was the result of excusable neglect or inadvertence.

Upon the timely filing of a grievance, the provisions of subsections (m) through (r), inclusive, shall apply. The discharge of probationary employees shall not be subject to the grievance procedure.

The decision of the arbitrator on a disciplinary matter grievance shall be final and binding upon the parties, except as provided in this paragraph. The arbitrator shall not substitute their discretion for that of the City, and the City's decision or penalty will be upheld unless there has been a clear abuse of discretion on the part of the City.

(h) Days. The time limits provided herein refer to calendar days.

(i) Waiver of time limits. The time limits provided herein may be waived by the mutual consent of the parties.

(j) Department head. A grievance which is not settled at the first level may, within 12 days of the decision of the supervisor, be appealed in writing to the department head. If so appealed, the grievance, unless previously formally presented, shall be presented as provided in subsection (c). The department head shall render a decision and comments in writing and return them to the employee within 12 days after receipt of the formal grievance.

(k) Power of immediate supervisors and department heads in resolving grievances. In the resolution or decision of a grievance, no immediate supervisor or department head shall modify any procedure or rule within the department unless and until such supervisor or department head shall have received the written approval of the City Manager. However, the immediate supervisor and department head may interpret and apply existing procedures or rules.

(l) City Manager. A grievance which is not settled at the department head level may be appealed in writing to the City Manager within 12 days of the decision of the department head. Within 12 days after receipt of the appeal, the City Manager shall set a date, which is not more than 12 days from the date of receipt of the appeal, to meet with the grievant and with

other appropriate persons to attempt to resolve the grievance. If a solution is not agreed upon, the City Manager shall render a decision within 12 days of the meeting.

While a grievance appeal is pending before the City Manager, the parties, by mutual agreement, may request mediation. If the parties are unable to agree upon the mediator, they shall request the California State Mediation Service or a suitable alternate to provide a mediator. Costs of mediation shall be divided one-half to the City and one-half to the employee. The mediator or mediating agency shall make no public recommendations, nor take any public position concerning the issues, but shall work directly with the parties involved.

(m) Determination by arbitrator or adjustment board. A grievance which is not settled by the City Manager may be appealed in writing for final determination. The written notice of appeal must be filed with the City Manager within 12 days of the date of the City Manager's written decision.

If the grievance is of a disciplinary action consisting of a suspension of less than 30 days or another action where there is no discharge, demotion, or reduction in pay, the grievance shall be submitted to an adjustment board comprised of two (2) employee representatives and two (2) representatives of the City.

No decision of the adjustment board shall be final and binding without receiving the affirmative votes of at least three (3) members. The parties may mutually agree to submit other types of grievances to the adjustment board.

If the grievance is of a disciplinary action consisting of a discharge, a suspension of thirty (30) days or more, a demotion, or a reduction in pay, or a dispute which involves the interpretation or application of any provision of this Memorandum of Understanding, any provision of the Personnel Rules, or written departmental rules, or a dispute which has been submitted to an adjustment board and the board has been unable to arrive at a majority decision, the grievance shall be submitted to an arbitrator.

(n) Selection of arbitrator or adjustment board. Within 12 days after the filing of the appeal the City Manager and the grievant shall meet or otherwise communicate to select an adjustment board or mutually acceptable arbitrator, as the case may be, who agree to serve. Where the matter is to go to arbitration, if the parties cannot agree, a list of five arbitrators will be obtained from the California State Conciliation Service, American Arbitration Association, or some other source mutually agreed upon. If the parties cannot agree on one of the names on the list, each party (beginning by lot) shall alternately strike one name from the list until one name remains, who shall be the arbitrator if that person agrees to serve. If that person will not serve, the process shall be repeated until an arbitrator is found.

(o) Decision. The decision of the arbitrator shall be in writing and shall set forth the findings of fact and conclusions on the issues. It shall be submitted to the City Manager and the grievant and shall be final and binding upon the parties.

(p) Changes in Memorandum of Understanding not arbitrable.

Proposals to add to or change this Memorandum of Understanding or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum of Understanding, nor any subject matter arising out of or in connection with such proposal, may be referred to arbitration under this section. Neither any adjustment board nor arbitrator shall have the power to modify this Memorandum of Understanding or written agreements or addenda supplementary thereto, or to establish any new terms and conditions of employment.

(q) Limitation. No adjustment board or arbitrator shall entertain, hear, decide, or make recommendations on any dispute, unless such dispute falls within the definition of a grievance, as set forth in subsection (a) above.

(r) Costs. The fees of the arbitrator (including any per diem expenses, travel and subsistence expenses), the cost of any hearing room, and the cost of preparing the transcript of the hearing, if any, for the arbitrator shall be borne one-half by the City and one-half by the grievant. All other costs and expenses shall be borne by the party incurring them.

(s) Exclusiveness of remedy. The grievance procedure shall be the exclusive remedy for matters which are grievable thereunder.

#### Section 26. Loss of Driver's License

(a) An employee whose driver's license is suspended, revoked, or becomes invalid, which prevents the employee from operating a vehicle during the course of the employee's duties for a period of six (6) months or less, shall be subject to a salary reduction of 5% during the period of such suspension, revocation, or invalidity.

(b) If the license revocation, suspension, or invalidity significantly prevents the employee from performing a predominant amount of the employee's duties, the City Manager may suspend the salary and benefits of the employee for the duration of the license suspension, revocation or invalidity. Alternatively the City Manager may assign such employee to the duties of another classification if the employee is qualified to perform such duties for the duration of the license suspension, revocation, or invalidity. The salary of such employee may be adjusted to the step in the range of the classification to which the employee is reassigned which most closely approximates a five percent (5%) loss of salary.

(c) If the loss of such driver's license is attributable to the use of alcohol or drugs, the employee shall agree to and shall faithfully participate in a counseling and rehabilitation program agreed to by the City to correct the problem, if requested to do so by the City Manager. Failure to agree and to faithfully participate in such a program shall be cause for dismissal.

(d) Any suspension, revocation, or invalidity of the driver's license of an employee for a period of more than six (6) months so as to prevent the employee from operating a vehicle during the course of the employee's duties, or any failure of an employee to notify the City of any suspension, revocation, or invalidity of the employee's driver's license, regardless of

duration, shall be cause for dismissal. This does not limit the City from taking any other disciplinary action if otherwise justified.

### Section 27. Disaster Responsibility

When a significant disaster, as defined by the City Manager, occurs in San Bruno, employees in classifications set forth in Appendix "A" of this Memorandum of Understanding shall report to their work stations for duty; provided, however, where a natural or man-made disaster is of such magnitude that a reasonable person would think to respond, no notification is necessary and the employee, upon actual knowledge thereof, shall report to work accordingly.

### Section 28. Carry Out of Assignments

Employees shall carry out all lawful instructions issued by their supervisor regarding work assignments. If there are any complaints in regard to the work assignment, the employee may exercise the right to use the grievance procedure after the instruction has been carried out.

### Section 29. No Strike/Job Action Response

(a) Participation in any job action, as defined in Section 19.1 (12) of this Memorandum of Understanding by an employee pertaining to employment with the City of San Bruno shall constitute an automatic resignation from the position, which position shall be deemed for all purposes to be vacant.

(b) The City will make reasonable efforts to avoid obtaining materials, supplies, or equipment from businesses within the City that are the subject of a job action if there are reasonable alternative sources within the cities of Millbrae, San Bruno, or South San Francisco. This will not apply to materials, supplies or equipment which the City is legally required to obtain from a particular source due to competitive bidding requirements or other contractual obligations. In the event that such items are to be picked up at a place of business which is the subject of a job action, the City shall refrain from the use of bargaining unit employees to obtain them if other alternatives are reasonably available. In times of emergency this paragraph will not be applicable. For purposes of this paragraph, "emergency" is defined as an immediate threat to life and property. The Union shall be notified when the "emergency" exception is to be invoked.

### Section 30. Part-time Employees

(a) Employees occupying permanent part-time positions shall work such hours and schedules as prescribed by the appointing authority.

(b) Permanent part-time employees assigned to allocated positions shall be entitled to sick leave, family sick leave, and family medical leave pursuant to state and federal laws, bereavement leave; and industrial disability leave and vacation leave in proportion to the number of hours of the work week such employee bears to the number of hours of regular work

week for employees occupying full-time positions.

(c) Permanent part-time employees assigned to allocated positions shall be entitled to holiday pay and accrual of personal leave as outlined in Section 19.7 in proportion to the number of hours their regularly assigned work week bears to the number of hours of the regular work week for employees occupying full-time positions.

(d) Permanent part-time employees assigned to allocated positions who are employed for more than 1040 hours and not less than six months in any 12-month period shall be eligible to participate in the Life Insurance Group Policy.

(e) Permanent part-time employees shall be entitled to medical insurance in accordance with the provisions of Section 20.1 of this Memorandum of Understanding.

(f) All permanent part-time employees in this bargaining unit are included in the City's PERS retirement program for miscellaneous employees.

### Section 31. Attendance

Failure on the part of an employee, absent without leave, to return to duty within 24 hours after notice to return shall be cause for immediate discharge, and such employee automatically waives all rights under the Personnel Ordinance, Rules and Regulations, and this Memorandum of Understanding. Notice shall consist of a letter by registered mail delivered to the last known address of the employee. In evaluating whether to discharge an employee for failure to return to duty, the City Manager may consider whether there were extenuating circumstances which prevented the employee from returning to duty within the time required.

### Section 32. Tuition and Certification Reimbursement Program

(a) The City will reimburse the employee for the cost of books and tuition at accredited public educational institutions. Upon approval of the employee's department head, the City will also reimburse the cost of tuition and materials for the employee to attend an accredited certification program appropriate to the employee's work. If the course is at a private institution, the approval of the City Manager is required, and the City reserves the right to reimburse only a portion of the tuition.

(b) The courses of instruction taken by the employee must be job related or taken in pursuit of a degree and the employee must have obtained the prior approval of the department head and the City Manager, if appropriate, prior to taking the course in order to be entitled to reimbursement.

(c) The employee must receive a passing grade in order to receive reimbursement.

(d) Reimbursement will be made upon submission to the City of written evidence that the employee obtained a passing grade in the approved course.

### Section 33. Past Practices and Existing Memorandum of Understanding

(a) Continuance of working conditions and practices not specifically provided herein or authorized by ordinance or resolution of the City Council shall not be guaranteed by this Memorandum of Understanding.

(b) Specific provisions of this Memorandum of Understanding shall supersede all existing and prior memoranda of understanding between City and the Union, personnel rules, regulations, resolutions, and ordinances on the same subject.

(c) As to any subject matter which is not covered in this Memorandum of Understanding, the Personnel Rules and Regulations, City ordinances, and City resolutions shall be applicable.

### Section 34. Negotiable Benefits

The inclusion of certain benefits in this Memorandum of Understanding shall not preclude the City and the Union from meeting and conferring and agreement upon other or substituted benefits in subsequent memoranda of understanding.

### Section 35. Separability of Provisions

Should any section, clause, or provision of this Memorandum of Understanding be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provisions shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Memorandum of Understanding.

In the event of such invalidation, the parties agree to meet and confer concerning substitute provisions for the provisions rendered or declared illegal.

### Section 36. New Work

In the event that the City introduces new work which the union believes does not fall within any of the existing classifications, the City and the Union shall, upon written request, meet and confer with respect to the assignment or classification of such work.

### Section 37. Fitness Benefit

The City agrees to provide, as an employer-paid benefit, membership to the City's Recreation Center fitness facility for each member of the bargaining unit desiring the same.

### Section 38. Work Uniforms

(a) In recognition that employees are required to wear City adopted work uniforms during

the performance of City work, the City shall issue to an employee in the classifications of Mechanic I/II, Maintenance Worker I/II, Maintenance Technician, CATV Technician I/II/III, Pump Mechanic I/II, and Community Services Officer II shall receive a one-time basic issue of four (4) sets of coveralls, or, at the option of the employee, the cost equivalent thereof in a combination of coveralls, pants, shirts, T-shirts, and jackets and appropriate uniform(s), jackets and footwear for CSO II. Issued clothing shall be replaced by the City as required in the judgment of the department head.

The City will provide cleaning services for City-provided work uniforms.

#### Section 39. Bargaining Unit Assignment Clarification

The positions of Librarian I and Librarian II shall both be in this bargaining unit.

Upon ratification of this Memorandum of Understanding by vote of the bargaining unit membership, persons assigned to positions classified as Field Supervisor or Assistant Engineer shall no longer be members of this bargaining unit. Those persons, together with any persons who may be assigned such classifications in the future, shall be members of the Mid-Management bargaining unit currently represented by Teamsters Local No. 350. It is understood and agreed that these positions retain salary agreements (a minimum of benchmark linkages shall be maintained) reached during this negotiation and then subsequently be subject to the terms and agreements negotiated by the Mid-Management bargaining unit. It is also further agreed that the Field Supervisor position would remain eligible for over-time or management leave time (but only one option) and that the Assistant Engineer position would be eligible for 60 hours management leave time.

The City agrees to change the title of the Administrative Assistant classification to "Executive Assistant."

#### Section 40. Term

(a) This Memorandum of Understanding, entered into on the 22d day of February, 2001, and retroactive to the 1st day of November 2000, except as otherwise noted, shall remain in effect for those employees employed in the classifications set forth in Appendix "A" for the period from November 1, 2000, and until October 31, 2004, except to the extent that such Memorandum of Understanding may be modified by the parties during such period, and shall continue in full force and effect until either superseded by a subsequent Memorandum of Understanding or by such other action of the City Council affecting wages, hours, and conditions of employment of the employees in classifications covered by this Memorandum of Understanding.

(b) The City and Union shall commence negotiations on the successor agreement to this agreement no later than March 31, 2004, with the goal of concluding negotiations prior to the expiration of this agreement on October 31, 2004.

(c) In the event the parties to this Memorandum of Understanding fail to successfully negotiate

a Memorandum of Understanding to succeed this one, and either party declares an impasse, the parties shall proceed to mediation pursuant to Resolution 1970-20, as amended and if that procedure does not resolve the dispute, the parties shall, within 30 days thereafter, proceed to advisory fact-finding through the use of a three (3) member panel consisting of one (1) member selected by the Union, one (1) member selected by the City and a third member selected by the first two members from a list provided by the State Mediation and Conciliation Service. Authorized costs, if any, associated with the third party's participation shall be borne equally by the Union and the City. The results of such advisory fact-finding shall be kept confidential unless otherwise mutually agreed upon between the Union and the City.

If the parties are unable to reach agreement after the conclusion of such fact-finding, the Union shall not be precluded from conducting informational picketing on City premises in accordance with State and Federal laws, provided the Union, its officers, and representatives shall not prevent any City employee from reporting to work.

This Memorandum of Understanding is a compilation of the previous Memorandum of Understanding, with modifications negotiated by and between the parties, and thereafter approved pursuant to San Bruno City Council Resolution 2001-\_\_.

Dated: February 22, 2001:

For the City of San Bruno:

For the Miscellaneous Employee Unit, represented by Teamsters Local 856:

\_\_\_\_\_  
Frank Hedley, City Manager

\_\_\_\_\_  
Larry Ferrigno, Business Agent

\_\_\_\_\_  
Steve Rogers, Assistant City Manager

\_\_\_\_\_  
Dave Lind, Mechanic II

\_\_\_\_\_  
AnnMarie Scala, ACR III

\_\_\_\_\_  
Dave Thomas, CATV Director

\_\_\_\_\_  
Judy Steele, Library Assistant II

\_\_\_\_\_  
Scott Munns, Public Works Director

\_\_\_\_\_  
John Rosewicz, Maintenance Worker II

\_\_\_\_\_  
Marty Cardone, Maintenance Worker II

\_\_\_\_\_  
John Tallitsch, PW Inspector/Eng'g

Tech

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Rob Miguel, CATV Technician